

REMARKS

The present application was filed on June 24, 2003 with claims 1-23. Claims 24 and 25 were added by a prior amendment. Claims 1 through 25 are presently pending in the above-identified patent application.

In the Office Action, the Examiner rejected claims 18 under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter, rejected claims 1-17 and 19-25 under 35 U.S.C. §101 because the machine is executed the method claims, and rejected claims 1-10, 12-22, 24 and 25 under 35 U.S.C. §103(a) as being unpatentable over Jones (United States Patent No. 6,175,822) in view of MacGinite et al. (United States Patent No. 6,766,294). Claims 11 and 23 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jones in view of MacGinite et al. and further in view of Epstein (United States Patent No. 6,754,626).

First, Applicants respectfully disagree with the Examiner's asserted that Applicants' prior arguments are "moot" in view of the new grounds of rejection. Applicants submit that the prior arguments, especially with respect to the Section 101 rejections, were not affected by the prior amendments or new rejections, if any, and should have received a substantive response from the Examiner.

Further, Applicants note that MacGintie et al. and Epstein et al. were previously cited by the Examiner, and presumably previously overcome, by Applicants Amendment and Response to the Office Action mailed on March 27, 2006.

Section 101 Rejection

Claim 18 was rejected under 35 U.S.C. §101 because the claim is directed to non-statutory subject matter. The Examiner asserts that an Article of Manufacture does not fall within at least one of the four categories of patentable subject matter recited in Section 101. An Article of Manufacture, however, is a well-recognized "composition of matter."

The Examiner asserts that claim 18 is not directed to a practical application of a judicial exception.

Physical Transformation

The Supreme Court has stated that the "[t]ransformation and reduction of an article 'to a different state or thing' is the clue to patentability of a process claim." *Gottshalk v. Benson*, 409 U.S. 63, 70, 175 U.S.P.Q. (BNA) 676 (1972). In other words, claims that require some kind of transformation of subject matter, which has been held to include intangible subject matter, such as data or signals, that are representative of or constitute physical activity or objects have been held to comply with Section 101. See, for example, *In re Warmerdam*, 31 U.S.P.Q.2d (BNA) 1754, 1759 n.5 (Fed. Cir. 1994) or *In re Schrader*, 22 F.3d 290, 295, 30 U.S.P.Q.2d (BNA) 1455, 1459 n.12 (Fed. Cir. 1994).

Claim 18 expressly recites the step of "**converting** said spoken words to text using a speech recognition technique to generate converted text." The word "converting" explicitly conveys a transformation from one form to another (in this case, spoken words to converted text). The generated converted text is then used to confirm an accuracy of the textual entry substantially during said telephone call.

Useful, Concrete and Tangible Result

Claim 18 expressly recites a "useful, concrete and tangible result" by providing a confirmation of an accuracy of the textual entry of spoken words.

Applicants submit that claim 18 is in full compliance with 35 U.S.C. §101, and accordingly, respectfully requests that the rejection under 35 U.S.C. §101 be withdrawn.

Claims 1-17 and 19-25 were also under 35 U.S.C. §101 because "the machine is executed the method claims" [sic]. Applicants are at a loss to understand this rejection. Section 101 explicitly recognizes both processes (i.e., methods) and machines. In a similar manner to claim 18, claims 1-17 and 19-25 **convert** spoken words to text using a speech recognition technique to generate converted text. The word "converting" explicitly conveys a transformation from one form to another (in this case, spoken words to converted text). The generated converted text is then used to confirm an accuracy of the textual entry substantially during said telephone call.

In addition, Claims 1-17 and 19-25 expressly recite a "useful, concrete and tangible result" by providing a confirmation of an accuracy of the textual entry of spoken words.

Prior Art Rejections

Independent claims 1, 12, 18 and 19 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jones in view of MacGinite et al. Regarding claims 1, 18 and 19, for example, the Examiner asserts that Jones discloses a method for validating a textual entry of spoken words of a caller (citing col. 1, lines 19-22), comprising receiving a telephone call from said caller (citing col. 7, lines 48-57); and obtaining a textual entry of said spoken words from a call agent (col. 8, line 65, to col. 9, line 7).

The Examiner acknowledges that Jones does not disclose the steps of converting said spoken words to text using a speech recognition technique to generate converted text; and comparing said textual entry to said converted text to confirm an accuracy of said textual entry substantially during said telephone call.

The Examiner asserts, however, that these steps are disclosed by MacGintie et al. (citing col. 11, lines 10-19 and 33-57)

Contrary to the Examiner's assertion, however, MacGintie et al. does not disclose or suggest comparing the textual entry to the converted text to confirm an accuracy of the textual entry *substantially during the telephone call*, as required by each independent claim. Rather, as discussed hereinafter, MacGintie et al. is comparing two previously recorded files that are both retrieved from memory.

In particular, as discussed by MacGintie et al. in col. 11, line 58, to col. 12, line 36, a transcriptionist text file database 30c stores manually transcribed transcriptionist text files. *Id.* at lines 58-60. A recognition engine text file database 30d stores recognition engine text files transcribed via the plurality of speech recognition engines 14. Col. 12, lines 2-6. Each recognition engine text file, transcriptionist text file and speech file are linked and stored within the database 30 maintained by the central speech processor 12. *Id.* at 16-22.

As clearly discussed in lines 23-36, the comparator 52 reviews the time stamped recognition engine text files with time stamped transcriptionist text files based upon the same speech file so as to determine differences between the recognition engine text file and the transcriptionist text file. Thus, the comparator 52 is comparing two files that are both retrieved from memory

(databases 30c and 30d)

Thus, MacGintie et al. is describing an *offline process*, and does not disclose or suggest comparing the textual entry to the converted text to confirm an accuracy of the textual entry *substantially during the telephone call*, as required by each independent claim. From the passage relied upon by the Examiner, see also, col. 11, lines 32-42, where it is noted that “a transcriptionist retrieves the job and corrects the text...” Again, this is clearly describing an *offline process*.

The present invention, on the other hand, requires a comparison between (i) a textual entry of spoken words of a caller; and (ii) a speech recognized version of those spoken words. Independent claims 1, 12 and 18 require that the textual entry is compared to the converted text to confirm an accuracy of the textual entry *substantially during the telephone call*. In this manner, the present invention verifies the accuracy of the human agent *in real time*. Generally, the present invention uses speech recognition as a tool to judge the accuracy of a real-time human generated input. MacGintie et al. specifically states (citing col. 12, lines 39-44) that the comparison assumes that the human textual entry is accurate, while the present invention is assessing the accuracy of the textual entry (of the human call center agent).

Again, MacGintie et al. does not disclose or suggest comparing the textual entry to the converted text to confirm an accuracy of the textual entry *substantially during the telephone call*, as required by each independent claim.

Dependent Claims

Dependent claims 2-11, 13-17 and 20-25 were rejected under Section 103. Claims 2-11, 13-17 and 20-25 are dependent on claims 1, 12 and 19, respectively, and are therefore patentable because of their dependency from amended independent claims 1, 12 and 19 for the reasons set forth above, as well as other elements these claims add in combination to their base claim.

All of the pending claims, i.e., claims 1 through 25, are in condition for allowance and such favorable action is earnestly solicited.

If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Examiner is invited to contact the undersigned at the telephone number indicated below.

The Examiner's attention to this matter is appreciated.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin M. Mason".

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